

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1997 SESSION

FILED
November 4, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

v.)

WOODY J. DOZIER,)

Appellant.)

No. 02C01-9610-CC-00357

Dyer County

Honorable J. Steven Stafford, Judge

(Aggravated rape; aggravated kidnapping)

CONCURRING OPINION

I concur in the results and most of the reasoning of the majority opinion. However, it indicates on page 23 that the aider and abettor, as those terms are used to enhance rape to aggravated rape, need not have the same criminal intent as the defendant. I respectfully disagree.

I believe that the legislature intended the same meaning for aiding and abetting in the aggravated rape statute as has been used historically for aiding and abetting in Tennessee criminal law. This consists of three elements:

(1) Presence (actual or constructive), Watson v. State, 158 Tenn. 212, 12 S.W.2d 375, 377 (1928);

(2) Intent that the crime be committed, Presley v. State, 161 Tenn. 310, 30 S.W.2d 231 (1930); and

(3) Participation by which the crime is encouraged, procured, assisted or otherwise promoted. Flippen v. State, 211 Tenn. 507, 365 S.W.2d 895, 899 (1963).

In this sense, I believe that the aider and abettor must act with an awareness of the principal's intent for the purpose of having that intent succeed.

I believe that it is the fact of increased potential for menace and harm presented by criminals acting in concert that led to aiding and abetting being made an aggravating enhancer to rape. Thus, for the defendant to be subject to aggravated rape because Turner aided and abetted him, then Turner must have known of the defendant's intent and helped it to succeed. However, I agree with the majority opinion's analysis that sustains the aggravated rape conviction. Turner's actions and words in and out of the car reflect an awareness of the intended criminal conduct and action to have the conduct succeed. Therefore, the defendant was aided and abetted by Turner in the forcible rape.

Joseph M. Tipton, Judge